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June 2, 1998

Magalie R. Salas, Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

Re: CCB/CPD No. 98-34

Dear Ms. Salas:

Enclosed please find an original and four copies of USLD Communications, Inc.'s Comments to CCB/CPD No. 98-34.

A copy of these Comments has been delivered to the International Transcription Service, Inc. Please place a copy of this letter in the public record.

If you have any questions regarding this matter, please contact Christi Shewman at (703) 610-4809.

Sincerely,

Douglas W. Kinkoph  
Vice President, Regulatory and Legislative Affairs

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of:

Specific Questions Related  
To Assessment Of Presubscribed  
Interexchange Carrier Charges  
On Public Payphone Lines

CCB/CPD No. 98-34

REPLY COMMENTS OF USLD COMMUNICATIONS, INC.  
REGARDING THE PUBLIC NOTICE  
ON SPECIFIC QUESTIONS RELATED TO ASSESSMENT OF  
PRESUBSCRIBED INTEREXCHANGE CARRIER CHARGES  
ON PUBLIC PAYPHONE LINES

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USLD Communications, Inc. ("USLD") hereby submits reply comments urging the Federal Communications Commission to amend the PICC regulation to clarify how it should be applied to payphone lines. USLD is an interexchange carrier, which provides both 1+ and 0+ interexchange services, primarily to the privately-owned payphone market.

I. Introduction

The Federal Communications Commission ("Commission") should amend the presubscribed interexchange carrier charge ("PICC") regulation, 47 C.F.R. § 69.153, to clarify (1) if PICCs apply to payphone lines; (2) what the maximum PICC is on payphone lines; (3) who should be charged the PICC for payphone lines; and (4) if PICCs apply in the same manner to local exchange carrier ("LEC")-owned and privately-owned payphones. The Comments filed on May 26, 1998 in response to the Commission's Public Notice requesting comments on the assessment of PICCs on payphone lines<sup>1</sup>, demonstrate that there is widespread disagreement in interpreting the regulation in the industry, and that the parties overwhelmingly seek clarification from the Commission. Regardless of what decisions the Commission makes on these issues, it is imperative that the Commission clarify the regulation so that the industry can implement it as quickly and smoothly as possible. The PICC regulation, as it stands today, lacks clarity and specificity as it applies to payphones. As a result, the PICC regulation has created confusion and spurred disputes about the appropriate way to apply PICCs to payphone lines.

In addition, the Commission should amend the PICC regulation to clarify that it must be applied equally by all price cap LECs to all payphone lines, regardless of who owns the payphones. A policy of non-discrimination in applying PICCs to payphones is required by the Telecommunications Act of 1996 ("Act"), for public policy reasons, and for practical considerations. It is, therefore, critical that the Commission take action to clarify the PICC regulation and to require consistent, non-discriminatory application of PICCs to payphone lines.

- II. Does the Commission's existing rule governing collection of the PICC, 47 C.F.R. § 69.153, permit price cap LECs to impose PICC charges for LEC public payphone lines and, if not, whether the rule should be amended to provide explicitly for assessment of PICCs on public payphone lines?

The Commission should amend the PICC regulation to clarify if price cap LECS are authorized to apply PICCs to payphone lines. Although in Comments the LECs<sup>2</sup> assert that the regulation clearly permits them to assess PICCs on payphone lines, it is not clear and the regulation should be amended to provide explicit rules on applying PICCs to payphone lines. The PICC regulation states that "[a] charge expressed in dollars and cents per line may be assessed upon the subscriber's presubscribed interexchange carrier ...." 47 C.F.R. § 69.153(a). The regulation goes on to detail the maximum PICC for primary residential lines, single-line business lines, non-primary residential subscriber lines, and multi-line business lines. Payphones do

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<sup>1</sup> Public Notice, DA 98-845, May 4, 1998

<sup>2</sup> BellSouth Telecommunications, Inc. Comments at 2; Bell Atlantic at 2; SBC Communications Inc. Comments at 2; GTE Service Corporation Comments at 6; The Southern New England Telephone Company Comments at 7; Ameritech Comments at 4.

not qualify as any of the defined categories and the regulation does not provide a specific PICC ceiling for payphones. It also does not specify which party should pay the PICC.

While the regulation states that the charge may be assessed on the subscriber's presubscribed interexchange carrier, and payphones do have presubscribed interexchange carriers, price cap LECs should not be authorized to charge PICCs on payphone lines without clearly defined PICC ceilings and direction on which party should be charged. In addition, PICCs should only be assessed to the extent that they cover LEC costs not already reimbursed through other compensation mechanisms for payphones. Because the regulation is not clear, it should be amended to clarify whether the Commission intended that price cap LECs apply PICCs to payphones.

- III. Assuming that price cap LECs are permitted to assess PICC charges on public payphone lines, should the PICC be: (a) charged to the presubscribed 1+ carrier; (b) charged to the presubscribed 0+ carrier; (c) imputed to the LEC's payphone unit as an end user; (d) split evenly between the 1+ and 0+ PIC; or (e) prorated among all IXCs that carry calls originating from a particular payphone each month? Commenters may also propose other alternative methods for allocating the public payphone PICC.

If the Commission determines that PICCs do apply to payphone lines, it should clarify who will be charged the applicable PICC. The commenting parties clearly disagreed about who should be assessed the PICC for payphone lines. BellSouth, Bell Atlantic, Southern New England Telephone Company, and Ameritech use technological differences between "dumb" payphones and "smart payphones" to justify assessing the PICC to different carriers depending on whether the payphone is a LEC-owned "dumb"

payphone or whether the payphone is a privately-owned "smart" payphone, by arguing that there is only one presubscribed interexchange carrier on payphone lines.<sup>3</sup>

Meanwhile, SBC and GTE acknowledge that there are separate 0+ and 1+ presubscribed interexchange carriers on payphone lines.<sup>4</sup> MCI argues that assessing the PICC on either the 0+ or the 1+ carrier distorts the market and creates incentives for dial around.<sup>5</sup> Commenters, including Cleartel Communications, ONCOR and One Call Communications, agree that the 0+ carrier is not the appropriate party to pay the PICC.<sup>6</sup> This dispute could be eliminated by treating all payphone lines, regardless of the owner, as if no presubscribed interexchange carrier had been chosen on payphone lines.

PICCs should be assessed on the entity deriving revenue from the particular payphone. In the payphone context, the presubscribed interexchange carrier may be receiving little or no revenue from providing service to a particular payphone. Perhaps ideally, the solution would be to adopt the policy that the PICC be prorated among all interexchange carriers that carry calls originating from a particular payphone each month. However, as a practical matter, that requirement would be difficult to administer, would create additional disputes, and would add new burdens on all parties involved. Because the ideal solution is impracticable, payphone PICCs should be treated as if the payphone owner has not chosen a presubscribed interexchange carrier, and the LEC should assess the PICC directly to the payphone owner, as described in 47 C.F.R. § 69.153(b). In the case of LEC-owned payphones, the PICC

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<sup>3</sup> BellSouth Telecommunications, Inc. Comments at 2; Bell Atlantic Comments at 5; The Southern New England Telephone Company Comments at 2; Ameritech Comments at 8.

<sup>4</sup> SBC Comments at 3; GTE Service Corporation Comments at 6.

<sup>5</sup> MCI Telecommunications Corporation Comments at 7-8.

should be imputed to the LEC's payphone unit in order to maintain competitive neutrality among competitors.

PICCs applied to payphone interexchange carriers disproportionately burden some carriers, while benefiting others. The technology of "smart payphones" creates a problem with applying PICCs that is unique to the payphone situation. Although a "smart payphone" is presubscribed to one carrier, it may be programmed to dial around to another carrier. In this way, the payphone owner may choose one carrier who will pay the PICC and then route traffic to other carriers for different types of service, in order to receive the most favorable rates for a particular service. Typically, many interexchange carriers carry calls originating from a particular payphone during a month. The presubscribed interexchange carrier who pays the PICC is at a competitive disadvantage, while the many other carriers are free of the PICC burden.

The dial-around issue was addressed by the Commission in its Access Charge Reform Order<sup>7</sup> adopting PICCs. The Commission concluded that dial around was so unsubstantial that application of PICCs would not be inequitable to presubscribed interexchange carriers. However, in the payphone context, dial around is a substantial issue that would make application of PICCs to the presubscribed carrier inequitable. Because payphone owners program "smart payphones" to dial around routinely, the presubscribed interexchange carrier may be paying the PICC, while receiving little or no traffic from that location. In this situation, the presubscribed

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<sup>6</sup> Cleartel Communications, Inc. Comments at 1; ONCOR Communications, Inc. Comments at 6; One Call Communications, Inc. Comments at 4.

<sup>7</sup> *First Report and Order*, In the Matter of Access Charge Reform (CC Docket No. 96-262), Price Cap Performance Review for Local Exchange Carriers (CC Docket No. 94-1), Transport Rate Structure and

interexchange carrier is also not receiving the benefit of access reductions, in exchange for paying the PICC. Because assessing PICCs on the payphone presubscribed interexchange carrier often yields an inequitable result, the PICC should be treated as if the payphone owner has not chosen an interexchange carrier and should be applied uniformly to LEC-owned and privately-owned payphones.

IV. Should all public payphones be charged the multi-line business PICC, or should some public payphones, such as those that constitute the only telephone line at a given location, be charged the single-line business PICC?

If the Commission decides that PICCs do apply to payphone lines, it should apply the single-line business PICC to all payphone lines. The commenters disagree on the PICC amount that should be charged on payphone lines, and therefore, the Commission should establish a clearly defined maximum PICC for payphones as it has for other categories. Of the categories already defined by the Commission in the PICC regulation, payphone lines most resemble single-line business lines, and therefore, the LEC should charge the single-line business PICC. Payphone lines, even at locations with more than one payphone, do not receive the efficiencies of multiple lines. Multiple line businesses can optimize their lines in a single trunk group with incoming and outgoing calls automatically rolling over to the next available line. Unlike multiple line businesses, each payphone line is a separate stand-alone trunk group. While manual queuing occurs where all payphones are located in a single bank, it does not match the automation efficiencies of the multiple line business and further degrades where

phones are dispersed throughout a property. Finally, payphone owners are billed separately for each individual line. Although consolidated billing is an option for multiple payphones at one location, it is only available for an additional charge. Because payphone traffic patterns and billing most resemble single-line business line use, the single-line business PICC should apply to all payphone lines.

In the alternative, if the Commission chooses not to apply the single-line PICC to all payphone lines, the PICC should be assessed based on the number of payphone lines at a location. The PICC regulation distinguishes between single-line business and multi-line business for purposes of assessing the charge. Similarly, the PICC should be assessed on payphones based on the number of payphone lines at a location. The Commission should set defined PICC ceilings for payphone lines, as it has for residential and business lines, in order to eliminate on-going disputes about the PICC rate on payphone lines.

- V. Do policy reasons, practical considerations, or other factors suggest that price cap LECs should be permitted to assess PICCs on the LEC's public payphone lines that are different in amount, or collected from a different party, from those assessed on privately-owned payphones?

Price cap LECs should not be permitted to assess PICCs on LEC public payphone lines that are different in amount, or collected from a different party, than those assessed on privately-owned payphones. Some LECs argue that there is only one presubscribed carrier on a payphone line<sup>8</sup>, while others argue that the 0+ carrier should be assessed the PICC.<sup>9</sup> The result is that the 1+ carrier is assessed the PICC for privately-owned "smart" payphones, while the 0+ carrier is assessed the PICC for LEC-owned "dumb" payphones. By assessing the 0+ carrier on LEC-owned payphones, the LEC avoids having the PICC passed through from the carrier to the LEC's payphone unit. Because the existing PICC regulation is not clear, the LECs have interpreted it in a way that allows them to discriminate in favor of their own payphones. The Telecommunications Act of 1996 forbids "any Bell operating company that provides payphone service...[to] prefer or discriminate in favor of its payphone service." 47 U.S.C. § 276(a)(2). As a result, the Act does not allow Bell operating companies to discriminate in the amount or the party billed for PICCs on payphones. Although this particular provision of the Act applies to Bell operating companies, a consistent policy of non-discrimination should be implemented industry-wide and should be applied to all price cap LECs.

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<sup>8</sup> BellSouth Telecommunications, Inc. Comments at 2; Bell Atlantic Comments at 5; The Southern New England Telephone Company Comments at 2; Ameritech Comments at 8.

<sup>9</sup> SBC Comments at 3; GTE Service Corporation Comments at 6.


In addition, both an interest in fairness and a practical need for clarity and uniformity in applying the PICC regulation to payphones suggest that price cap LECs should not be allowed to assess PICCs in a different manner on their own payphones than they do on privately-owned payphones. Because the PICC regulation, as it stands today, does not clearly address payphones, LECs are applying PICCs in an inconsistent manner, which is creating confusion and spurring disputes within the industry. The lack of clarity and consistency is counterproductive to industry efforts to achieve the goals of the Act. By requiring LECs to apply PICCs equally to LEC payphones and privately-owned payphones, the Commission could eliminate the confusion and conflict that the present regulations cause.

## VI. Conclusion

The Comments received in response to the Commission's public notice show that the PICC regulation adopted by the Commission has caused wide-spread confusion about its application to payphone lines. As a result, the Commission should amend the PICC regulation to clarify (1) if PICCs apply to payphone lines; (2) what the maximum PICC is on payphone lines; (3) who should be charged the PICC for payphone lines; and (4) if PICCs apply in the same manner to LEC-owned and privately-owned payphones. In amending the PICC regulation, the Commission's primary goal should be to provide clarity and consistency in the application of PICCs to payphone lines. By taking this action, the Commission can take a significant step

toward achieving the Act's goals of non-discrimination and fair, open competition in payphone service.

USLD Communications, Inc.

By:   
Douglas W. Kinkoph

## CERTIFICATE OF SERVICE

I, Christi Shewman, do hereby certify that copies of the foregoing Comments of USLD Communications, Inc. on Specific Questions Related to Assessment of Presubscribed Interexchange Carrier Charges On Public Payphone Lines, CCB/CPD No. 98-34, were served this 2<sup>nd</sup> day of June, 1998 to the parties on the attached list by hand delivery or first class mail, postage paid.

  
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